Notes for an Address by The Honourable Martin Cauchon, PC, MP
Minister of Justice and Attorney General of Canada

Canadian Bar Association

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Thank you for that kind introduction. It is an honour for me to again address the Canadian Bar Association's annual conference. I'm pleased that you've chosen to hold this year's meeting in Montreal, one of my favourite cities, the most vibrant metropolis in North America.

We all know that the traditional approach by ministers of justice here is to discuss the accomplishments and priorities of the department. Today, though, I've chosen to focus on a single topic; an issue that has dominated headlines and dinner-table discussions this summer; and one that I believe cuts to the very heart of Canadian values: the recognition of same-sex marriage.

I've chosen this course, even though I'm proud of the Government's progress on other issues. We're fighting child pornography and corporate market fraud. We're putting children first in times of family break-up and we're reforming our marijuana laws.

I'd like to acknowledge the work the CBA has done on these and other issues of concern to Canadians. I particularly appreciate the CBA's contributions in the area of legal-aid reform. I know that there's still more work to be done, and I look forward to continuing to work with you.

Indeed, the contributions of the CBA and other partners are essential if our system of justice is to meet the needs of Canadians; and continue to reflect the values that we hold dear: human dignity, equality and respect for all.

As you're well aware, a draft bill on marriage will be sent to Parliament for a free vote, once the Supreme Court provides an opinion on its constitutionality. This historic bill has two components: the first recognizes same-sex marriage, the second protects the right of religious groups to refuse to perform ceremonies contrary to their beliefs.

Some people question why the Government took this step rather than appealing recent court decisions on this issue.

I think the Prime Minister put it best when he pointed out that Canadian society evolves continuously. In our democracy, public debate guides that evolution.

At one time, Canadians accepted that young children could work in coal mines, often in deplorable conditions. In the past, women were not persons under the law. Divorce was once considered scandalous; common law relationships, even more so. Divorced women had trouble getting jobs and mortgages. Those attitudes have changed over time. Our society has evolved.

So, too, have our views toward minorities, including gays and lesbians.

Up until the late 1960s, most homosexual behaviour was illegal. The Justice Minister of the day, Pierre Elliott Trudeau, championed a landmark law that removed from the *Criminal Code* certain private acts between consenting adults.

This signaled a higher level of social tolerance and paved the way for a series of changes to other laws, policies and practices.

Up until 1977, for instance, homosexuality was still sufficient grounds for deportation from Canada; until 1992, gays and lesbians were prohibited from serving in the military. These practices were abolished, and each of these changes was preceded by a passionate debate about these values.

Today, the issue of same-sex marriage, or, as some call it, "equal marriage", has inspired a new debate in Canada. I'm proud to be Minister of Justice in a country that protects the rights of minorities and respects the beliefs of all citizens.

As a society, we believe in equality — equal despite differences in race, language or sexual orientation. We also believe in freedom of religion — protecting others' freedom to believe though we may not follow their faith.

Both of these fundamental principles are reflected in our *Charter of Rights and Freedoms*. They co-exist; one does not trump the other. And the Government believes that both are fully reflected in the draft bill.

The bill states that

> *"marriage for civil purposes is the union of two persons to the exclusion of all others."*

But it also states that

> *"nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs."*

During the past year, appeal courts in Ontario and British Columbia have reached the same conclusion: the opposite-sex requirement of marriage is contrary to the Charter and discriminates against same-sex couples by denying them access to the institution of marriage. A similar ruling by the Quebec Superior Court is under appeal.

This is what the Ontario court said:

> *"Exclusion perpetuates the view that same-sex marriages are less worthy*

> *of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships."*

But the courts were also clear that freedom of religion ensures that religious groups have the right not to conduct same-sex marriages.

As the B.C. court said:

> *"No religious body would be compelled to solemnize a same-sex marriage against its wishes, and all religious people-of any faith-would continue to enjoy the freedom to hold and espouse their beliefs."*

Some Members of Parliament and other Canadians agree that same-sex relationships ought to be recognized, but not called marriages. These views are part of the debate. But the government believes that this proposal falls short of true equality.

Clearly, we must do better than almost equal.

Gays and lesbians in Canada have long-term relationships. They belong to our families, and, in some cases, raise children. They contribute to our communities and pay taxes. This Government believes that they should also have access to marriage. Anything less is discrimination.

This idea was also highlighted in the CBA's eloquent submission to the House of Commons Standing Committee on Justice and Human Rights.

To quote from your brief:

> *"The creation of a separate registry may have the effect of creating or entrenching the public perception that same-sex unions are somehow inferior to heterosexual unions because government has affirmed that same-sex couples do not deserve the right to marry."*

Your brief clearly rejects discrimination and calls for full legal recognition of same-sex marriage.

Some have proposed that the Government of Canada get out of the marriage business; that we recognize civil unions only and leave marriage to religious groups. But this would abrogate our responsibility under the Constitution to define marriage. It would also deny the rights of Canadians who do not choose a religious ceremony.

I recognize that the rapid pace of change on this issue has been unsettling for some. We have certainly heard from critics of our proposal. I appreciate their views and respect them. All Canadians will also have an opportunity to express their views as a bill proceeds through Parliament.

But I believe that supporters of equality must also speak out. I encourage groups such as the CBA to help explode the myths surrounding the proposed legislation. We must remind Canadians that the law specifically protects the right of religious officials to refuse to marry same-sex couples. And, in addition to this provision, the Charter safeguards religious freedom.

The Charter was not put in place by the judiciary. Its adoption in 1982 was a political decision following a full debate in Parliament. Since then, the courts have played their role in ensuring the guarantees set out in the Charter are respected.

I believe that we must also counter the notion that recognizing the rights of gays and lesbians somehow diminishes or devalues heterosexual marriage.
Let me be clear — extending marriage to same-sex couples does not take away any rights from opposite-sex couples, nor does it erode the significance or sanctity of marriage.

On the contrary, it provides more Canadians with access to the institution. Marriage will remain what it has always been — a reflection of the important commitment between couples, whether same sex or opposite sex.

More than three decades ago, Pierre Trudeau uttered those famous words, "the state has no place in the bedrooms of the nation." He modernized divorce laws and ensured that consenting adults could not be sent to jail for private sexual behaviour.

Back then, some predicted our country would surely descend into chaos.

Instead, the opposite has happened. Canada has grown stronger and more tolerant.

I believe that Canada has become a beacon to the world in our acceptance of minorities, and our respect for human rights and dignity.

The Government of Canada is showing leadership on the issue of same-sex marriage by seeking a balanced solution that will work for all Canadians.

It is simply a question of equality, human dignity and respect for all.

I urge you, and every Canadian who believes in these values, to add your voices to the debate.

Thank you. Merci.

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